

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
IN ADMIRALTY

PROGRESSIVE AMERICAN
INSURANCE COMPANY,
6300 Wilson Mills Road
Mayfield Village, OH 44143

Plaintiff,

v.

MARK K. BROOKS,
6205 2nd Street
Chesapeake Beach, MD 20732

Defendant.

Case No.: _____

COMPLAINT FOR DECLARATORY RELIEF

COMES NOW, the Plaintiff, PROGRESSIVE AMERICAN INSURANCE COMPANY, (hereinafter "PROGRESSIVE"), by and through counsel, HARTEL, KANE, DeSANTIS & HOWIE, LLP and Michael A. DeSantis, Esquire, and files this Complaint For Declaratory Relief against Defendant, MARK K. BROOKS, individually, (hereinafter "BROOKS") and states as follows:

PARTIES, JURISDICTION AND VENUE

1. This matter seeks the declaration of rights, liabilities, and duties of the parties under a Marine Policy of Insurance, which is deemed a maritime contract giving rise to admiralty and maritime jurisdiction. Jurisdiction is predicated upon 28 USC § 1333, Admiralty (interpretation of a marine insurance contract); and 28 U.S.C. §2201 (declaratory judgment).



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This action is maintained within the admiralty and maritime jurisdiction of the United States District Court and is brought within Rule 9(h) of the Federal Rules of Civil Procedure and Supplemental Rules governing admiralty and maritime claims.

2. At all times material, PROGRESSIVE was formed under the laws of the State of Ohio with its principal place of business in Cleveland, Ohio.

3. At all times material, Defendant BROOKS was a citizen and resident of the State of Maryland.

4. At all times material, PROGRESSIVE issued to BROOKS a policy of marine insurance, Maryland Boat and Personal Watercraft Policy number 85353351-5 providing insurance coverage for a 1984 Sea Ray 360 Aft Cabin bearing hull identification number SERF11111183 (hereinafter referred to as the "Vessel"). (A copy of the policy is attached hereto as Exhibit A.)

5. The PROGRESSIVE insurance policy provided, among other coverages, Comprehensive Coverage, Collision Coverage, Liability Coverage, and Medical Payments and Personal Effects coverage subject to the terms, conditions, endorsements and exclusions forming the marine insurance contract.

6. BROOKS is the sole named insured under the PROGRESSIVE policy referenced above.

7. On March 16, 2014 the Vessel was involved in a maritime casualty in which it became partially submerged.



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8. As a result of the partial submersion, BROOKS filed a claim with PROGRESSIVE seeking coverage for the damage to the Vessel.

9. The actions giving rise to this declaratory action arose within the navigable waters of the United States and within the boundaries of this Court.

10. As a result of the claim by BROOKS, there exists an actual controversy between the parties as to the relations, rights, and duties under the policy of insurance for which a declaration is sought from this Court.

11. This Court has jurisdiction to declare the rights, liabilities and duties of the parties to the attached contract of marine insurance.

12. General maritime law applies to this action.

COUNT I

Property Damage Coverage Excluded - Failure to Winterize Vessel

13. PROGRESSIVE adopts and realleges the allegations contained in paragraphs 1 - 12 as though fully set forth herein and further alleges as follows:

14. The policy at "Section IV - Physical Damage Coverage, Insuring Agreement - Collision Coverage," provides coverage for "sudden, direct and accidental loss to a covered watercraft



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resulting from collision" subject to the terms, conditions and exclusions of the policy.

15. The policy at "Section IV - Physical Damage Coverage, Insuring Agreement - Comprehensive Coverage" provides coverage for "sudden, direct and accidental loss to a covered watercraft that is not caused by collision" subject to the terms, conditions and exclusions of the policy. A loss not caused by collision includes: "impact with an animal, explosion or earthquake, fire, malicious mischief or vandalism, missiles or falling objects, riot or civil commotion, theft or larceny, windstorm, hail, water, or flood, or breakage of glass not caused by collision."

16. Investigation into the facts and circumstances surrounding the loss disclosed that the loss occurred in whole or in part as a result of the watercraft not having been properly winterized.

17. The PROGRESSIVE policy contains an exclusion at Part IV Exclusions which provides that:

Coverage under this Part IV will not apply for loss:

19. that occurs because a covered watercraft has not been properly winterized in accordance with the manufacturer's specifications, subject to local customs.



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18. Notwithstanding that the loss resulted from the failure to properly winterize the Vessel, BROOKS has demanded payment under the policy for damages.

19. As a result of the foregoing, PROGRESSIVE is uncertain of its rights, duties and obligations under the policy and seeks a declaration of the Court that the loss resulted from the failure to properly winterize the Vessel. PROGRESSIVE further requests that this Court declare that the loss is excluded from coverage and that PROGRESSIVE has no duty to defend or indemnify BROOKS for the subject loss.

COUNT II

Property Damage Coverage Excluded Unseaworthiness

20. PROGRESSIVE adopts and realleges the allegations contained in paragraphs 1- 12 as though fully set forth herein and further alleges as follows:

21. The policy at "Section IV - Physical Damage Coverage, Insuring Agreement - Collision Coverage," provides coverage for "sudden, direct and accidental loss to a covered watercraft resulting from collision" subject to the terms, conditions and exclusions of the policy.

22. The policy at "Section IV - Physical Damage Coverage, Insuring Agreement - Comprehensive Coverage" provides coverage for "sudden, direct and accidental loss to a covered watercraft that is not caused by collision" subject to the terms,



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conditions and exclusions of the policy. A loss not caused by collision includes: "impact with an animal, explosion or earthquake, fire, malicious mischief or vandalism, missiles or falling objects, riot or civil commotion, theft or larceny, windstorm, hail, water, or flood, or breakage of glass not caused by collision."

23. The PROGRESSIVE policy contains an exclusion at "Part IV Exclusions" which provides that:

Coverage under this Part IV will not apply for loss:

3. that occurs because a **covered watercraft** is not in seaworthy condition.

24. Investigation into the facts and circumstances surrounding the loss revealed that the Vessel was in generally poor condition and was not seaworthy at the time of loss. Specifically:

- the sea water inlet shut off valves for the generator were seized in the open position as a result of corrosion;
- sea water was leaking into the Vessel from multiple sources including from a cracked sea strainer,
- the starboard propeller shaft and stuffing box were leaking,
- the port-side engine was partially disassembled,



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- the exhaust discharge hose was disconnected,
- the Vessel was unfit for use in the manner intended by the manufacturer and unfit to remain afloat, unattended, and secured to a dock or mooring.

25. The partial submersion occurred, in whole or part, as a consequence of the unseaworthy condition of the Vessel.

26. Notwithstanding the unseaworthy condition of the Vessel, BROOKS has demanded payment under the policy for damages.

27. As a result of the foregoing, PROGRESSIVE is uncertain of its rights, duties and obligations under the policy and seeks a declaration of the Court that the loss resulted from Defendant's failure to maintain the Vessel in a seaworthy condition. PROGRESSIVE further requests that this Court declare that the loss is excluded from coverage and that PROGRESSIVE has no duty to defend or indemnify BROOKS for the subject loss.

COUNT III

PROPERTY DAMAGE COVERAGE EXCLUDED DUE TO WEAR AND TEAR, GRADUAL DETERIORATION AND CORROSION

28. PROGRESSIVE adopts and realleges the prior allegations contained in paragraphs 1- 12 as though fully set forth herein and further alleges as follows:



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29. The policy at "Section IV - Physical Damage Coverage, Insuring Agreement - Collision Coverage," provides coverage for "sudden, direct and accidental loss to a covered watercraft resulting from collision" subject to the terms, conditions and exclusions of the policy.

30. The policy at "Section IV - Physical Damage Coverage, Insuring Agreement - Comprehensive Coverage" provides coverage for "sudden, direct and accidental loss to a covered watercraft that is not caused by collision" subject to the terms, conditions and exclusions of the policy. A loss not caused by collision includes: "impact with an animal, explosion or earthquake, fire, malicious mischief or vandalism, missiles or falling objects, riot or civil commotion, theft or larceny, windstorm, hail, water, or flood, or breakage of glass not caused by collision."

31. The PROGRESSIVE policy contains an exclusion at "Part IV Exclusions" which provides that:

Coverage under this Part IV will not apply for loss:

8. caused directly or indirectly by:
 - a. wear and tear; or
 - b. gradual deterioration of any kind, including, but not limited to, weathering, rust, corrosion, mold, wet or dry rot, osmosis, delamination, or blistering; or
 - c. dock rash or other gradual marring or scratching; or
 - d. mechanical, electrical, or structural breakdown; or



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e. any design, manufacturing, or latent defect. This exclusion does not apply:
a. if the damage results from the theft of a covered watercraft; or
b. to ensuing loss caused by consequential sinking, burning, explosion or collision of a covered watercraft;

32. Investigation has determined the loss was caused directly or indirectly by, wear and tear, corrosion and weathering because the sea cocks for the generator were seized in the open position as a result of corrosion which prevented proper winterization and allowed freeze damage to the sea strainer and permitted unrestricted inflow of water into the Vessel.

33. Notwithstanding that the damage to the Vessel was caused directly or indirectly as a result of wear and tear, gradual deterioration, and corrosion and is therefore excluded from coverage, BROOKS has demanded payment under the policy for the damages.

34. As a result of the foregoing, PROGRESSIVE is uncertain of its rights, duties and obligations under the policy and seeks a declaration of the Court that the loss resulted from wear and tear, corrosion and weathering. PROGRESSIVE further requests that this Court declare that the loss is excluded from coverage and that PROGRESSIVE has no duty to defend or indemnify BROOKS for the subject loss.



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WHEREFORE, Plaintiff, PROGRESSIVE AMERICAN INSURANCE COMPANY seeks a declaration and judgment from the Court as follows:

A. Declare that the damage to the Vessel is excluded from coverage under the terms and conditions of the policy including exclusions 19 (winterization), exclusion 3 (unseaworthiness) and exclusion 8 (wear and tear and corrosion);

B. Declare that Plaintiff has no duty to indemnify Defendant for any loss or liability associated with the partial submersion of the Vessel on or about March 16, 2014.

C. Declare that Plaintiff has no duty to defend Defendant for any loss or liability associated with the partial submersion of the Vessel on or about March 16, 2014.

D. Any further relief as this Court may deem just and proper.



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Respectfully submitted,

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